

REMARKS

By this amendment, claims 1, 3-10, 12-28, 34-41, and 43-49 are pending, in which claims 2, 11, 29-33, and 42 were previously canceled without prejudice or disclaimer, claims 17-28, 34-40, 43, and 44 stand withdrawn from consideration, and claim 5 is currently amended. No new matter is introduced.

The Office Action mailed September 27, 2011 objected to claim 5 and rejected claims 1, 3-10, 12-16, 41, and 45-49 under 35 U.S.C. § 103 as being obvious based on *Rao et al.* (U.S. Pat. No. 6,978,453) (hereinafter, “*Rao*”) in view of “SyncML Meta-Information DTD” (hereinafter, “*Synch*”) and *Szeto* (U.S. Pat. No. 7,188,143) (hereinafter, “*Szeto*”). The objection and rejection are respectfully traversed.

Objection to claim 5.

As suggested on page 8 of the Office Action, Applicants have amended claim 5 to recite, *inter alia*, “wherein the command is a command selected from the group consisting of an Exec command, an Add command, a Copy command, a Delete command, a Get command, and a Replace command.” (Emphasis added). Accordingly, withdrawal of the objection is respectfully requested.

Claims 1, 3-10, 12-16, 41, and 45-49 are rejected under 35 U.S.C. § 103 as being obvious based on *Rao* in view of *Synch* and *Szeto*.

Applicants respectfully disagree with the Office Action’s interpretation, and conclusion, that the applied references disclose or render obvious all of the claimed features. In this case, there are substantial differences between the claimed features and those of the applied references.

For example, independent claim 1 recites, *inter alia*, “receiving at an electronic device an executable command **specifying execution of an unidentified executable on first data without specifying which executable should be used** for the first data.” (Emphasis added).

Likewise, independent claims 41 and 49 recite similar features in varying scope. As mentioned in the previous Response filed August 3, 2011 (hereinafter, “Previous Response”), independent claims 1, 41, and 49 were previously clarified by reciting that the received executable command specifies execution of an unidentified executable on first data but does not specify which executable is to be used for the first data. Applicants submit, as presented below, that the applied references do not disclose or render obvious such features.

With respect to the above-discussed features, the Office Action, on page 9, admits that *Rao* and *Sync* are deficient. Nonetheless, the Office Action, on page 10, relies on Fig. 12A, col. 1, lines 55-58, col. 7, lines 48-53, and col. 12, line 66, to col. 13, line 16, of *Szeto* for the asserted teaching of “specifying (e.g., via an identifier) an unidentified executable (e.g., support application) without specifying which executable should be used.” For the purpose of illustration, the cited portions of *Szeto* are provided below (emphasis added):

It should be noted that software intended for implementing an instruction set in an instant messaging environment may be generally referred to as an instant messenger application or IM application. . . .

The environment may also be specified by the user of the application. By way of example and without limitation, instant messaging environments may be implemented using the wireless application protocol, XML, VRML, or any other appropriate public or private standard. . . .

FIG. 12A is a flow chart illustrating the control and execution of IM applications in an instant messaging system, in accordance with one embodiment of the present invention. In step 1202, IM client 202 (FIG. 2 or 10) evaluates an IM message. From the IM message, the IM client 202 determines the application type (i.e., movie trailer, game, animated cartoon, advertisement, Flash presentation, etc.) in step 1204. Using an identifier, the IM application is retrieved in step 1206.

In step 1208, a decision is made as to whether a supporting application is required such as a media player (Real Player, Windows Media Player), content viewer (Adobe Illustrator, Reader, etc.), or other media-based display application. If required, the supporting application is launched in step 1210. If a supporting application is not required or if the supporting application has been launched, then the IM application is implemented/executed in step 1212. Alternative embodiments pertinent to the type of IM application implemented are shown in FIGS. 12B through 12D. . . .

The Office Action, on page 10, interprets the above-reproduced paragraphs as describing that “the supporting application is not identified by an initial command for IM message, wherein the initial command would only identify an application for rendering the IM message, and only upon further examination is the need for the supporting application determined/identified via application type identifier.” Nonetheless, as provided in the above-reproduced paragraphs, the IM client 202 also implements/executes the retrieved IM application. *See also Szeto*, col. 13, lines 27-36. Specifically, if the support application is not required, then the IM application is still implemented/executed. The supporting application, if required, is utilized merely to “support” the execution of the IM application.

In addition, to whatever extent the IM message in *Szeto* may be interpreted as the alleged executable command and the application type (e.g., movie trailer, cartoon, game, advertisement) may be interpreted as a content type of the data, which it identifies, such identification results in the supporting application that will be employed to support the rendering of the application type. Therefore, even assuming such an interpretation, it is clear that the IM message (command) in *Szeto* does specify **which executable should be used** (e.g., the supporting application). This is in direct contrast to the claimed features of “receiving an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data” (e.g., the executable command does not specify which

executables should be used and the meaning of the command depends upon the content type of the data which it identifies, *see* paragraph [0047] of the present specification). As such, it is clear that *Szeto* is inapplicable.

For this reason alone, i.e., none of the applied references, or any combination thereof, teaches or suggests the claimed features of “receiving at an electronic device an executable command **specifying execution of an unidentified executable on first data without specifying which executable should be used** for the first data,” no *prima facie* case of obviousness has been established regarding the subject matter of claims 1, 3-10, 12-16, 41, and 45-49.

Moreover, Applicants maintain the arguments in the Previous Response with respect to the improper combination of *Rao*, *Sync*, and *Szeto* even assuming, *arguendo*, that *Szeto* discloses what the Office Action has asserted (which it does not). While *Rao* and *Sync* are directed to systems employing SyncML DM for updating firmware in mobile handsets and other devices, and *Rao* discloses employing enhancements to SyncML DM specifications, *Szeto* is directed to a completely different system, i.e., messenger-controlled applications in an Instant Messaging (IM) environment.

The person of ordinary skill in the art seeking to modify *Rao/Sync* in some manner would clearly not have been led to the IM arts. In particular, the determination, from an IM, of an application type, the retrieval of an IM application, and the determination as to whether a supporting application is required, as in *Szeto*, would have no place in *Rao*’s system. The person of ordinary skill in the art would simply not have been led, from a teaching of determining application types, retrieving an IM application, and determining the need for a supporting application in an IM system, to modify the mobile handset 107 of *Rao* such that an update command for executing data associated with firmware update data in the mobile handset is

executed on the firmware update data **without specifying which executable should be used** for the firmware update data. Any conclusion to the contrary could only have been arrived at through the exercise of impermissible hindsight gleaned from knowledge of Applicants' disclosure.

The claim feature of "receiving at an electronic device an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data," was simply not known in the prior art. There would have been no reason to modify any of the applied references, or any combination thereof, to include the feature of specifying execution of an unidentified executable without specifying which executable should be used because the components in the applied references are not concerned with any executable command that does not specify which executables should be used and whether the meaning of the command would depend on the identified content type.

A proper rationale for determining obviousness requires some "articulated reasoning with some rational underpinnings." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007). The Examiner has not provided any such articulated reasoning with some rational underpinnings. The mere assertion, on pages 6 and 7 of the Office Action, that *Rao* teaches receiving an executable command to execute on first data, and that *Szeto* teaches "without specifying execution of an unidentified executable for the first data, and that, therefore, all of the claimed features are taught, and that the proposed combination would provide a "reliable system" (or to execute and control applications) is insufficient to establish a *prima facie* case of obviousness, within the meaning of 35 U.S.C. § 103.

Persons of ordinary skill in the art would not have been led to modify either *Rao* or *Sync*, or the combination thereof, with any teaching of *Szeto*. *Szeto* is so far removed from the subject

matter of *Rao* and/or *Sync* as to constitute nonanalogous subject matter. The test for analogous art outside an inventor's field of endeavor is whether the art pertains to the particular problem confronting the inventor. *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). It is clear that the IM system of *Szeto* is outside the field of endeavor of both Applicants and *Rao/Synch*. Moreover, *Szeto* does not pertain at all to the problem confronting the inventors, *viz.*, the configuration of an electronic device, e.g., a mobile phone, such that a SyncML code is created that is suitable for performing a common process on a plurality of target devices that does not require specific adaptation for use with each device, i.e., to instruct an executable to be performed on particular data using SyncML code that can be re-used for other devices. Accordingly, since *Szeto* constitutes nonanalogous art, it is improper to combine this reference with *Rao* and/or *Sync* in an attempt to reconstruct the claimed invention.

Thus, no *prima facie* case of obviousness has been presented regarding the subject matter of claims 1, 3-10, 12-16, 41, and 45-49. Accordingly, the rejection of claims 1, 3-10, 12-16, 41, and 45-49 under 35 U.S.C. § 103 is neither factually nor legally viable. Therefore, withdrawal of this rejection is respectfully requested.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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